IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.324 OF 2003

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The Maharashtra State Co.op.
Marketing Federation Ltd. ...Petitioner

v/s.

Shri Ganesh Trading Co. ...Respondent

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Mr.Chetan Kapadia i/b Nandu Pawar for the Petitioner.

Mr.S.S. Shah for the Respondent.

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CORAM: D.K.DESHMUKH, J.

DATED: 16TH MARCH,2005

P.C.:

1. By this petition filed under Section 34 of the Arbitration Act the award made by the sole arbitrator has been challenged. First challenge to the award is that though the arbitrator has found that the Respondent is entitled to payment of 20% amount which was withheld by the Petitioner, the arbitrator has not considered the claim of the Petitioner for recovery of amount from the Respondent towards loss that was caused. It is, however, pertinent to note that in the written statement filed on behalf of the Petitioner admittedly neither there was any counter claim made nor any amount was claimed as set off. In fact in the written statement, quantity of alleged loss in transit and the price of that quantity was not specified. In the absence of specificing the quantity of loss and the value of that quantity , in my opinion, the Petitioner could not have claimed entitlement to retain 20% amount to which the Respondent was entitled under the contract. I do not find any error in the award made by the arbitrator in this regard.

2. Second contention urged is in relation to clause 2 of the operative part of the order. It reads as under:-

> "The respondent is directed to pay the amount of Rs.18,16,047.37 within three months from the date of this order, if Respondent failed to pay above stated amount within three months in that event the Claimant is entitled interest on aforesaid amount @ Rs.12% p.a. from the date of filing of this application.

3. It is pointed out in relation to this clause that firstly the rate of 12% is excessive and secondly, direction for payment of interest from the date of application of failure of the Respondent to make the payment of the amount awarded within three months is in the nature of mandatory.

4. I have heard the learned Counsel appearing for both sides on this aspect. In my opinion, following order would meet the ends of justice.

O R D E R

The rate of interest, which the Respondent would be entitled to claim from the Petitioner on the awarded amount of Rs.18,16,047.37 would be 9% p.a. from the date of award till the date of realisation. The award stands modified to that extent. Petition disposed of.

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